IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 13535 of 2006(J)

OS.379/2002 of ADDL.SUB COURT, IRINJALAKUDA

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PETITIONER:

VARGHESE.M.O,
AGED 51, S/O.OUSEPH,
MALIYEKKAL MALAKKARAN HOUSE,
KOODAPUZHA DESOM, KIZHAKKE CHALAKKUDY VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN
SRI.AJU MATHEW

RESPONDENTS:

1. PYNADATH FINANCE CORPORATION, NEAR POLICE STATION, KIZHAKKE CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT REP. BY ITS MANAGING PARTNER MR.GEORGE.J.PYNADATH, AGED 59, S/O.JOSEPH, PYNADATH HOUSE, IRRIGATION QUARTERS ROAD, CHALAKUDY, KIZHAKKE CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK,T HRISSUR.

2. SUHAMA DEVI, AGED ABOUT 39, W/O.SASI, THIKKATT HOUSE, NEAR KORATTY RAILWAY STATION, KORATTY KIZHAKKUMMURY VILLAGE, MUKUNDAPURAM TALUK.

3. CHANDRAN.V.K, AGED ABOUT 45, VADAKKEKUDY HOUSE, NALUKETT DESOM, KORATTY, DO. DO.

4. JOSE.M.O, AGED ABOUT 44, S/O.OUSEPH, MALIYEKKAL MALAKKARAN HOUSE, KOODAPPUZHA DESOM, KIZHAKKE CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK.

5. ROSILY, AGED ABOUT 46, W/O.VARGHESE.M.O, DO. DO.

BY ADV. SRI.SIBY MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE PHOTOSTAT COPY OF IA 1173/05**
EXT. P2	**TRUE PHOTOSTAT COPY OF THE OBJECTION FILED BY THE DEFENDANTS IN EXT. P1**
EXT. P3	**TRUE PHOTOSTAT COPY OF THE ORDER DT. 21.2.06 PASSED IN IA 1173/05 IN OS 379/02 ON THE FILE OF THE SUB COURT, IRINJALAKUDA**

RESPONDENT'S EXHIBITS:

EXT.R1A	**TRUE PHOTOCOPY OF PPLAINT IN OS 379/02 FILED BEFORE THE SUB COURT, IRINJALAKUDA**
EXT.R1B	**TRUE PHOTOCOPY OF DOCUMENT SCHEDULE SUBMITTED BY THE FIRST RESPONDENT BEFORE THE SUB COURT, IRINJALAKUDA**
EXT.R1C	**TRUE COPY OF PETITION TO CALL FOR THE RECORDS FILED BY THE FIRST RESPONDENT EBFORE THE SUB COURT, IRINJALAKUDA**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 13535 of 2006 J

JUDGMENT

Petitioner is the first defendant in O.S.No. 379/02 on the file of the Sub Court, Irinjalakuda. The Sub Judge, on Exhibit P1 application filed by the plaintiff, passed Exhibit P3 order, appointing a Chartered Accountant for auditing the accounts to ascertain the extent of the amounts, if any, misappropriated by the defendants. The prayer in this writ petition is to quash Exhibit P3 order.

2. According to the counsel for the petitioner, in Exhibit P1 application, no mention at all is made as to which all documents are to be audited by the Chartered Accountant and that, however, no document is produced before court.

3. It is submitted by the counsel for the respondents that Exhibit R1(c) petition had been filed in the court below to call for all the

documents contained in the file of Crime Nos.109/02 and 287/02 of Chalakudy Police Station from the records of the Judicial First Class Magistrate's Court, Chalakudy; that those records are the records to be examined by the Chartered Accountant to ascertain the misappropriation and that no account books are in the possession of the respondents, as all the records are seized by the police and produced before the Magistrate's Court. It is also submitted that, however, no order has been passed in Exhibit R1(c) petition by the court below.

4. The respondents shall file a detailed list of the account books and other records now before the Judicial First Class Magistrate's Court, Chalakudy, which are required to be examined by the Chartered Accountant. On filing of such a list with notice to the petitioner, the court below shall consider whether all those documents are to be called for from the Magistrate's Court as prayed

for in Exhibit R1(c) petition and if the court finds that those are records necessary to be examined for the purpose of the suit by the Chartered Accountant, he shall call for those records from the Magistrate's Court. After obtaining such documents from the Magistrate's Court, the court below shall pass appropriate orders appointing a Chartered Accountant along with an Advocate Commissioner for examining the accounts. The Chartered Accountant so appointed shall be from a panel filed by either of the parties, so, however, that the Chartered Accountant should be one acceptable to both sides. The records produced in court can be delivered over to the Commissioner and the Chartered Accountant can examine the accounts at the Office of the Advocate Commissioner. The Advocate Commissioner, who is so appointed, should be one of integrity and acceptable to both sides, so as not to give room for any complaint thereafter. If any further

document is to be examined for the purpose of verifying the accounts and that is so required by the Chartered Accountant, necessary application for that purpose has to be filed through the Advocate Commissioner and the court below shall pass appropriate orders thereon, after hearing both sides. Exhibit P3 order passed on Exhibit P1 application is set aside to enable the court below to pass appropriate orders in compliance with the directions given above.

This writ petition is disposed of with the above directions.

12th February, 2007 (K.P.Balachandran, Judge)

tkv